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TAN HOCK KHOON

v.

PHUA SIEW LANG & ORS

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COURT OF APPEAL, PUTRAJAYA

GOPAL SRI RAM JCA

AHMAD FAIRUZ JCA

MOKHTAR SIDIN JCA

[CIVIL APPEAL NO: J-02-485-1997]

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23 JUNE 2006

SUCCESSION: *Administration - Sale of land - Appeal against refusal of High Court to consent to sale of land - Whether judge indifferent to special and particular facts of case - Whether relevant considerations not taken into account - Whether appellate intervention warranted*

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The plaintiff as administrator *de bonis non* of the estate of the deceased entered into a conditional agreement to sell a piece of land forming part of the deceased's estate for RM1 million. It was a condition of the sale that he should obtain the consent of the High Court to effect the sale. The plaintiff applied to the High Court for consent but the application was opposed by the defendants, all of whom were beneficiaries of the deceased's estate. The learned judge who heard the matter dismissed it on the ground that the sale was not in the interest of the beneficiaries as the purchase price was not reasonable in view of the valuation reports produced and relied upon by the defendants. The plaintiff appealed, contending that the learned judge, in his approach, had been indifferent to the special and particular facts of this case.

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Held (allowing the appeal and setting aside the order of the High Court)

Per Gopal Sri Ram JCA:

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(1) Although at the hearing before the learned judge the 6th, 9th, 10th, 12th and 13th defendants produced a valuation report showing the land to be worth RM1.9 million, there was no evidence of a genuine buyer produced at the hearing of the summons or any earlier. There was mention made by the learned judge in his judgment of a statement by counsel for the remaining defendants that the 15th defendant was agreeable to a purchase of the subject land for RM1.3 million, but it was significant that no evidence of means was put in to

show a real ability on his part to produce the purchase price. Against all this, the judge had before him a purchaser who was ready, willing and able to complete the purchase at RM1 million without vacant possession. If the sale was not put through, there was no saying how many more years this estate would remain without being wound-up. There was, therefore, merit in the plaintiff's complaint that the learned judge failed to take into account relevant considerations when exercising his discretion against the plaintiff. (para 3)

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(2) In coming to his decision, the learned judge relied on the judgment of the Supreme Court in *Yap Yoke Luan v. Ong Wee Tok*. It was apparent from a reading of the judgment that there was a distinguishing feature in that case. The Federal Court was asked to balance the interests of the appellant purchaser in a run of the mill case of the sale by administrators. It was not, as in this instance, a case of the winding-up of the affairs of an estate that had remained without being administered for almost half a century. The next case of *Che Ah and Che Yang Kelsom v. Che Ahmad* was also distinguishable from the present instance. Firstly, the court there was being asked to balance the purchaser's interest against the interests of the beneficiaries. Here, the court was asked to consider other relevant circumstances, including the winding-up of an old estate. Secondly, the beneficiaries there had asked for the land to be put up for sale by public auction with a reserve price. Here, all that the beneficiaries wanted was to stop the sale. (paras 4 & 5)

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(3) A further point that ought to be made clear in view of the way in which the case was argued here and in the court below was that whilst the court may have regard to the interests of the beneficiaries, there was no requirement in law that a sale of the property of a deceased's estate must have the consent of all or even the majority of the beneficiaries. (para 6)

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(4) As this was a case in which the learned judge failed to take into account relevant considerations, it was appropriate for an intervention to be made in accordance with well-settled principles. (para 7)

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A Bahasa Malaysia *translation of headnotes*

- Plaintif sebagai pentadbir *de bonis non* pusaka simati telah memeterai satu perjanjian bersyarat untuk menjual sebidang tanah yang menjadi sebahagian pusaka simati dengan harga RM1 juta. Menjadi syarat penjualan bahawa bagi melaksanakan jualan plaintif harus mendapatkan kebenaran Mahkamah Tinggi. Plaintiff memohon kepada Mahkamah Tinggi untuk kebenaran, tetapi permohonannya dibantah oleh defendan-defendan, iaitu pewaris-pewaris pusaka. Yang arif hakim, setelah mendengar permohonan, menolak permohonan atas alasan bahawa penjualan tidak memanfaatkan pewaris-pewaris kerana harga jualan tidak munasabah mengambilkira laporan penilaian yang dikemukakan dan digunakan oleh defendan-defendan. Plaintif merayu dan berhujah bahawa yang arif hakim, dalam pendekatannya, tidak menghiraukan fakta-fakta khusus dan istimewa kes di sini.

Diputuskan (membenarkan rayuan dan mengenepikan perintah Mahkamah Tinggi)**Oleh Gopal Sri Ram HMR:**

- (1) Walaupun semasa pendengaran di hadapan yang arif hakim defendan-defendan keenam, kesembilan, kesepuluh, kedua belas dan ketiga belas mengemukakan laporan penilaian yang menunjukkan tanah berharga RM1.9 juta, tiada keterangan dikemukakan mengenai seorang pembeli tulen di pendengaran saman atau terdahulu dari itu. Dalam penghakimannya, yang arif hakim menyebut tentang kenyataan peguam bagi defendan-defendan yang lain bahawa defendan kelima belas bersetuju membelinya pada harga RM1.3 juta, namun tiada keterangan mengenai kemampuannya yang sebenar untuk membuat bayaran tersebut. Di sebalik semua ini, di hadapan hakim, terdapat seorang pembeli yang sedia, sanggup dan berkemampuan untuk membeli pada harga RM1 juta tanpa milikan kosong. Sekiranya penjualan tidak dibenarkan, entah berapa tahun lagi diperlukan sebelum pusaka di sini dapat diselesaikan. Oleh itu, terdapat merit pada hujah plaintif bahawa yang arif hakim gagal mengambil kira pertimbangan-pertimbangan relevan bilamana melaksanakan budi bicaranya terhadap plaintif.

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- (2) Dalam mencapai keputusannya, yang arif hakim bergantung kepada penghakiman Mahkamah Agong dalam *Yap Yoke Luan v. Ong Wee Tok*. Jelas dari pembacaan kes tersebut bahawa terdapat ciri-ciri perbezaan di dalamnya. Mahkamah Persekutuan diminta untuk mengimbangi di antara kepentingan perayu pembeli di dalam kes penjualan langsung oleh pentadbir-pentadbir. Ia bukanlah suatu kes penggulangan hal-ehwal pusaka yang sudah terbiar untuk tempoh setengah abad, sepertimana kes di sini. Kes *Che Ah and Che Yang Kelsom v. Che Ahmad* yang berikutnya juga boleh dibezakan dari kes semasa. Pertama, mahkamah di situ diminta untuk mengimbangi kepentingan pembeli dengan kepentingan pewaris-pewaris. Di sini, mahkamah diminta untuk mempertimbang halkeadan-halkeadan lain yang relevan, termasuk penggulangan satu pusaka lama. Kedua, pewaris-pewaris di situ telah meminta supaya tanah dijual melalui lelongan awam pada harga rizab. Di sini, apa yang dikehendaki oleh pewaris-pewaris adalah untuk menyekat penjualan. A
- (3) Seperkara lagi yang perlu dijelaskan, memandangkan cara kes ini dihujahkan di mahkamah ini dan di mahkamah di bawah, sementara mahkamah boleh mengambil kira kepentingan pewaris-pewaris, tidak ada keperluan di sisi undang-undang bahawa sesuatu penjualan harta pusaka perlu mendapat kebenaran kesemua mahupun majoriti pewaris-pewaris. B
- (4) Ini merupakan kes di mana yang arif hakim gagal mengambil kira pertimbangan-pertimbangan relevan. Oleh itu, campurtangan adalah wajar atas prinsip-prinsip yang sudah lama diterimapakai. C
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Case(s) referred to: G

Che Ah and Che Yang Kelsom v. Che Ahmad [1941] MLJ 126 (**dist**)
Chee Hock Lai v. Tan Swee Thai [1990] 2 CLJ 354; [1990] 1 CLJ (Rep) 354 HC (**fol**)
Yap Yoke Luan v. Ong Wee Tok [1983] 2 CLJ 252; [1983] CLJ (Rep) 433 FC (**dist**) H

For the appellant/plaintiff - Tun Salleh Abas (Lee Choon Hei with him); M/s KM Ong Lee & Co

For the 6th, 9th, 10th, 12th & 13th respondents/defendants - Tan Kok Kwong; M/s Tan Kok Kwang & Co

For the 2nd, 3rd, 4th, 14th, 15th, 16th, 17th, 23rd, 24th & 25th respondents - Mathews George; M/s Muthu & Co I

A *[Appeal from High Court, Muar; Originating Summons No: 24(HP)-235-1996]*

Reported by Suresh Nathan

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JUDGMENT

Gopal Sri Ram JCA:

C **[1]** The plaintiff as administrator *de bonis non* of the estate of Phua Si Toh (“the deceased”) entered into a conditional agreement to sell a piece of land forming part of the deceased’s estate. The purchase price was RM1 million. It was a condition of the sale that he should obtain consent of the High Court to effect the sale. The plaintiff applied to the High Court for consent. His application was opposed by the defendants, all beneficiaries of the deceased’s estate. The judge who heard the matter dismissed it on the ground that the sale was not in the interest of the beneficiaries as the purchase price was not reasonable in view of the valuation reports produced and relied upon by the defendants.

F **[2]** Learned counsel for the appellant criticised the approach of the learned judge as being indifferent to the special and particular facts of this case. Those facts are as follows. The deceased died intestate on 25 June 1951 following which letters of administration were issued to one Phua Kim Toh (“the 1st administrator”). The 1st administrator died on 10 October 1958 without winding up the deceased’s estate. Letters of administration were then issued to one Tan Hwai Ghee (“the 2nd administrator”). The 2nd administrator died on 24 October 1986 also without winding up the affairs of the deceased’s estate. It was only on 16 April 1990 that letters of administration *de bonis non* were issued to the instant plaintiff. At the date of the deceased’s death he left behind 5 sole beneficiaries one of whom was the first administrator. All these 5 who were deceased’s children are dead and they have left behind their issue who are the present beneficiaries. And they number 25. So, it comes to this. As at the date on which the plaintiff took out his summons for consent, that is to say, 20 June 1996, the deceased’s estate had remained without being administered for about 45 years.

[3] Although at the hearing before the judge the 6th, 9th, 10th, 12th and 13th defendants produced a valuation report showing the land to be worth RM1.9 million, there was no evidence of a genuine buyer produced at the hearing of the summons or any earlier. There is, mention made by the learned judge in his judgment of a statement by counsel for the remaining defendants that the 15th defendant was agreeable to purchase the subject land for RM1.3 million. But it is significant that no evidence of means was put in to show a real ability on his part to produce the purchase price. Against all this, the judge had before him a purchaser who was ready, willing and able to complete the purchase at RM1 million without vacant possession. If the sale is not put through there is no saying how many more years this estate will remain without being wound up. There is therefore merit in the complaint of learned counsel that the learned judge failed to take into account relevant considerations when exercising his discretion against the plaintiff.

[4] We now turn to the authorities. In coming to his decision, the learned judge relied on the judgment of the Supreme Court in *Yap Yoke Luan v. Ong Wee Tok* [1983] 2 CLJ 252; [1983] CLJ (Rep) 433. The facts of that case were these. The administrators of the estate of a deceased had agreed to sell land belonging to the estate to the appellants. The sale was subject to obtaining leave of the court. The administrators delayed in applying for leave, but in the meantime the appellants were allowed vacant possession of the land. The appellants subsequently obtained an order from the High Court ordering the administrators to apply to the court for leave to sell and transfer the land. The administrators filed an application to court for leave. The beneficiaries were cited as respondents and the appellants applied to be added as interveners. The application was dismissed by the learned judge as the beneficiaries opposed the application on the grounds *inter alia* that the agreed purchase price was grossly below the market value. The appellants appealed. The Federal Court dismissed the appeal. It was in the context of those facts that Syed Agil Barakhbah FJ said:

In this regard we are of the view that the appellants as the proposed purchasers under a conditional contract were perfectly well aware that their contract had to be approved by the Court before it could be carried into effect and they had taken the risk of losing their bargain if the Court refused to grant such approval.

- A The duty of the Court is to protect the rights of the beneficiaries and not to consider the interests of the proposed purchasers. In exercising its discretion the Court will have to look into the facts and surrounding circumstances of the case ie, whether the proposed sale was favourable to the beneficiaries and whether the
- B administrators had acted with proper prudence in exercising their overriding duty to obtain the best possible price. The Court is concerned that the price is a reasonable one not at the time the offer was made but at the time of hearing the application for approval of the proposed sale. (*Che Ah and Che Yang Kelsom v. Che Ahmad* [1941] MLJ 126 and *Buttle v. Saunders* [1950] 2 All
- C ER 193, 195 and *Tunku Ismail bin Tunku Mohamed Jewa and Anor v. Tunku Baharom bin Tunku Mohamed Jewa & Ors* [1982] 2 MLJ 44, 45). We agree with respect with the learned judge that the purchase consideration of RM150,000.00 was manifestly low in the light of the valuation of the market value of RM244,000.00 for the said land at the material time. It was apparent that the
- D administrators had failed to carry out their duty as trustees to obtain the best possible price.

- It is apparent from a reading of the judgment that there is a distinguishing feature in that case. The Federal Court was asked
- E to balance the interests of the appellant purchaser against those of the beneficiaries in a run of the mill case of a sale by administrators. It was not a case, as is apparent from the facts, of the winding up of the affairs of an estate that had remained without being administered for almost half a Century.

- F [5] Next we turn to *Che Ah and Che Yang Kelsom v. Che Ahmad* [1941] MLJ 126 which was cited by the Federal Court in *Yap Yoke Luan v. Ong Wee Tok*. In *Che Ah's* case, the administrator of a deceased's estate had entered into an oral contract to sell land
- G belonging to the estate for RM12,777.50. The agreement was subject to receiving the court's approval. The administrator's application for leave to sell was rejected because the solicitor for two of the beneficiaries had received an offer of RM14,000 from someone else. There are two passages in the judgment of Terrell
- H JA that must be looked at. In the first he says this:

I cannot accede to the argument put forward by Mr. Rix on behalf of the respondent, the administrator, that the Court must consider the interests of the proposed purchaser under the conditional contract.

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And this is what he says in the second:

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On the appeal Mr. Seenivasagam for the appellants asked that the sale should be by public auction at a reserve of RM14,000, and he undertook on behalf of another client to make a bid of, at all events, RM14,000 when the auction took place. In these circumstances I feel no doubt that it is the duty of the Court to make the order for which the applicants have asked. The appeal therefore should be allowed and the order of the Court below set aside. As, however, the administrator has not acted unreasonably in supporting a contract which he made in good faith with the prospective purchaser, the costs of both parties should be taxed as between solicitor and client and paid out of the estate.

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You can see at once that this case is distinguishable from the present instance. In the first place, the court there was being asked to balance the purchaser's interest against the interests of the beneficiaries. That is not the case before us. Here the court is asked to consider other relevant circumstances, including the winding up of an old estate. In the second place, there counsel for the beneficiaries asked the land to be put up for sale by public auction with a reserve price. That is not the case here. All that the beneficiaries want is to stop the sale. They made no suggestion of the sort made in *Che Ah's* case.

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[6] There is one further point that we think ought to be made clear in view of the way in which the case was argued here and in the court below. Whilst the court may have regard to the interests of the beneficiaries there is no requirement in law that a sale of the property of a deceased's estate must have the consent of all or even a majority of the beneficiaries. In *Chee Hock Lai v. Tan Swee Thai* [1990] 2 CLJ 354; [1990] 1 CLJ (Rep) 354 Abdul Malek J (now President of this court) said:

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Based on the said authorities, I had referred to ss 60 and 71 of the Probate and Administration Act 1959 where the provisions clearly state that where an administrator of an estate takes action without getting the approval of the court, the said action or any agreement made does not become null and void on the application of any party who has an interest in the matter. In this case, no one has taken any steps to vitiate the said agreement and moreover following the case of *Itam bte Saad v. Chik bte Abdullah* [1974] 2 MLJ 53 which was upheld by the Federal Court in *Chik bte Abdullah v. Itam bte Saad* [1974] 1 MLJ 221, the consent of the beneficiaries is not necessary to make the said agreement.

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- A** [7] As this is a case in which the learned judge failed to take into account relevant considerations, it is appropriate for us to intervene in accordance with well settled principles. We accordingly allowed the appeal, set aside the order of the High Court and granted an order in terms of the plaintiff's summons dated 20 June 1996. We also ordered that costs of all parties both in this court and below be taxed and paid out of the estate. Because of the special circumstances here, we directed the allocatur not to be drawn until after the completion of the sale. This was to ensure that estate would be in funds. The deposit of
- C** RM 500 was ordered to be paid out to the appellant.

[8] My learned brothers Ahmad Fairuz and Mokhtar bin Haji Sidin, JJCA have seen this judgment in draft and have expressed their agreement with it.

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